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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/069,827	02/26/2002	Helene Derand	HO-P02378USO	5350

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EXAMINER

BARTON, JEFFREY THOMAS

ART UNIT	PAPER NUMBER
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1753

DATE MAILED: 06/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/069,827

Applicant(s)

DERAND ET AL.

Examiner

Jeffrey T. Barton

Art Unit

1753

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 24 May 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-36 and 38-53.
Claim(s) withdrawn from consideration: 37.

AFFIDAVIT OR OTHER EVIDENCE

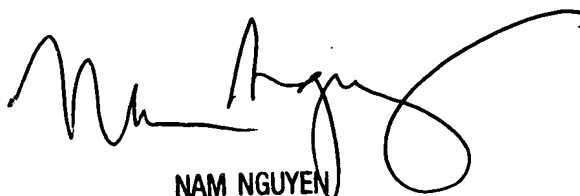
8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☐ Other: _____.

Continuation of 3. NOTE: The independent claims 7 and 33 in the proposed amendment give combinations of limitations that have not been presented previously. Specifically, (1) the Markush group from which the functional part is to be selected (Claim 7, lines 4-5) has been changed, (2) the combination of the limitations of claims 1, 6, 7, and 29 as presented in the Preliminary amendment of 26 February 2002 had not been presented before, and (3) Claim 33 as currently amended incorporates a limitation to a "functional part" that had not been presented before in conjunction with Claims 31-33 as presented in the Preliminary Amendment of 26 February 2002.

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's arguments are directed to the claims as presented in the After Final Amendment, which will not be entered for the reasons given above. Also, regarding Applicant's arguments concerning the combination of Amigo with Zimmer et al (Page 11, 1st and 2nd full paragraphs), Applicant correctly points out that Zimmer uses hydrophilic coatings of oxidized aluminum and photoreactive polymers, as examples, but these coatings are not incorporated in the combination. Fundamentally, the teaching of Zimmer et al in pages 5-8 is that hydrophilic surfaces in general are capable of drawing aqueous fluids through capillary forces. (e.g. Page 6, 1st full paragraph - Page 7, 1st full paragraph - no specific hydrophilization materials are required) Given this teaching, one having ordinary skill in the art would have realized that the hydrophilic coatings of Amigo would also be suitable for this purpose. Applicant asserts that Zimmer et al teach away from the use of inner surfaces that have low or no non-specific adsorption in order to create self-suction, but this cannot be the case, since Applicant also correctly states that "[n]owhere in Zimmer is non-specific adsorption discussed." Zimmer simply teaches that hydrophilic surfaces allow for capillary "self-suction", with non-limiting examples of suitable surfaces. Teaching one way of achieving a desired result is not teaching away from any other means of doing so.



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